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09/996,809	11/30/2001	Hui-Chuan Chen	BHT-3111-215	2675

  

EXAMINER
DESHPANDE, KALYAN K

  

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3623	

  

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

09/996,809

Applicant(s)

CHEN ET AL.

Examiner

Kalyan K. Deshpande

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-23,25,26,28,29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-23,25,26,28,29,31 and 32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Introduction***

1. The following is a non-final office action in response to the communications received on June 14, 2007. Claims 21-23, 25-26, 28-29, and 31-32 are now pending in this application.

### ***Response to Amendments***

2. Examiner acknowledges Applicants' amendments to claims 21, 28, 29, and 31. Examiner acknowledges Applicants' cancellation of claims 24, 27, and 30.

### ***Response to Arguments***

3. Applicants' arguments filed on June 14, 2007 have been fully considered but are not found persuasive in part and not persuasive in part. Applicants' arguments and amendments regarding the 35 U.S.C. 112 2<sup>nd</sup> paragraph rejections is persuasive in that the amendment to the claims remedies the deficiencies of the previously submitted claims. However, new 35 U.S.C. 112 2<sup>nd</sup> paragraph rejections are set forth based on these new amendments. Applicants further unpersuasively argue i) a "cut-in" operation is fully described because this term would be fully appreciated by the skilled artisan, ii) Barts fails to teach the delivery of "goods", specifically because Barts teaches the delivery of "vehicles", iii) Nakagawa fails to teach various features and elements.

In response to Applicants' argument a "cut-in" operation is fully described because this term would be fully appreciated by the skilled artisan, Examiner respectfully disagrees. A "cut-in" operation is not a known term in the art and therefore should be defined with enough sufficiency that would remove the claim from being

Art Unit: 3623

vague and indefinite. Furthermore, the applicable test is whether the term "cut-in" would be known by one of ordinary skill in the art, not as Applicants' argue that it would be known to a skilled artisan. Since the term "cut-in" operation is unknown to one of ordinary skill in the art, claims 21-23, 25-26, 28-29, and 31-32 are vague and indefinite.

In response Barts fails to teach the delivery of "goods", specifically because Barts teaches the delivery of "vehicles", Examiner respectfully disagrees. Applicants recitation of the term "goods" is broad enough that it covers any type of goods, including vehicles. Since a vehicle is a good, Barts explicitly teaches the delivery of goods. Applicants are reminded that claims are construed in the broadest reasonable interpretation and Examiner submits that construing vehicles to be goods is a reasonable interpretation.

In response to Applicants' argument Nakagawa fails to teach various features and elements, Examiner respectfully disagrees. First, Examiner is unclear as to exactly what Applicants are arguing. Applicants recite various features that Nakagawa fails to teach, however, Examiner only applies Nakagawa to the extent that Nakagawa is an analogous art and teaches the feature the monitoring, control, and analysis of "a return of a remainder of the goods by the vehicles after the distribution of the goods, and a return route of the vehicles" data (see Nakagawa paragraphs 78 and 83-93; where return times and return routes are included in the evaluation of the transportation and distribution plan.). Any other features Applicants' allege Nakagawa fails to teach is irrelevant since Nakagawa is only being applied to the feature discussed above. If

Art Unit: 3623

Applicants are alleging a specific deficiency in Nakagawa, Examiner respectfully requests Applicants to explicitly state such a deficiency.

Examiner notes the following discussion of Official Notice taken from the MPEP:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b). See also *Chevenard*, 139 F.2d at 713, 60 USPQ at 241 ("[I]n the absence of any demand by appellant for the examiner to produce authority for his statement, we will not consider this contention."). A general allegation that the claims define a patentable invention without any reference to the examiner's assertion of official notice would be inadequate. If applicant adequately traverses the examiner's assertion of official notice, the examiner must provide documentary evidence in the next Office action if the rejection is to be maintained. See 37 CFR 1.104(c)(2). See also *Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697 ("[T]he Board [or examiner] must point to some concrete evidence in the record in support of these findings" to satisfy the substantial evidence test). If the examiner is relying on personal knowledge to support the finding of what is known in the art, the examiner must provide an affidavit or declaration setting forth specific factual statements and explanation to support the finding. See 37 CFR 1.104(d)(2). If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate. If the traverse was inadequate, the examiner should include an explanation as to why it was inadequate. (MPEP § 2144.03(C))

Applicants are silent as to Examiner taking of Official Notice and thus have not "specifically point[ed] out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art." For these reasons, the features of the ability to "manage cost, expense, benefit, and reward" are taken to be admitted prior art because Applicant's traversal was inadequate.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3623

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 21-23, 25-26, 28-29, and 31-32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 21 and 30 recites a limitation of "a return of the goods after the distribution" and "returning control operation occurs during and after vehicles are returned". It is unclear how the goods are returned after distribution is completed. For the purposes of examination, Examiner is interpreting this limitation to mean "a return of the vehicles after the distribution of goods".

Claims 23 and 26 recite a "cut-in" operation. This term was indicated as unclear in the 112 second paragraph rejection of original claim 9 and claims 23 and 26 fail to make this term more clear. For the purposes of examination, this term is interpreted to mean a "priority delivery" operation.

Claim 24 recites the terms "automatic vehicle-arrangement process and a computer added artificial vehicle-arrangement process". The meaning and distinctions of these terms is unclear. For the purposes of examination, these terms are interpreted to mean "a computer assisted vehicle-arrangement process".

Claims 22-29 and 31-32 recite the same subject matter as claim 21 and are therefore rejected on the same grounds.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3623

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 21-23, 25-26, 28-29, and 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barts et al. (U.S. Patent Publication No. 20020082893) in view of Nakagawa et al. (U.S. Patent Publication No. 20010047237).

As per claim 21, Barts teaches:

A method for managing transportation and distribution (T&D) of goods from one place to at least one destination, which comprises the steps of:

a) processing a plan operation for distributing the goods after accepting orders and before distribution utilizing a support T&D system, the processing step a) including the steps of (see paragraphs 26-27 and 29-35; where tools are used to develop a plan for the transportation and distribution of items from manufacturing plants to the preferred destination.):

i) establishing T&D data including customer information, distribution destination information, planned distribution time, road size, vehicle size, destination coordination, and time and distance between subsequent destinations (see paragraphs 29-35; where data used in developing an operation plan includes customer information (such as customer facility points), distribution destination information (such as termination points), route size, vehicle or carrier size (where capacity and size are the same), destination coordination (such as a delivery plan), and network facility information between nodes (i.e. time and distance between subsequent nodes);

ii) determining vehicle-arrangement for vehicles (see paragraph 128 and 135; where vehicles are transported to a mixing center where they are arranged by destination to be loaded on to car-haulers to their destination.); and

iii) generating at least a supporting T&D result (see paragraph 137; where data is used to produce level distribution of product.);

b) monitoring and controlling the distribution of the goods utilizing a distribution and returning process system based on the supporting T&D result, the monitoring and controlling step b) including the steps (see paragraphs 126 and 136-137; where a management team monitors each event of the distribution and transportation of a product.):

i) controlling and monitoring an operation (see paragraphs 126 and 136; where a team of managers monitor and control each operation of the transportation and distribution system.);

ii) maintaining and evaluating results of the monitoring and controlling (see paragraph 137; where data from the transportation and distribution is sent to management computers, where the data is analyzed in order to determine the optimal distribution of product.); and

iii) producing at least one evaluation of the results from the monitoring and controlling (see paragraph 137; where feedback of the results is generated and captured.); and



Art Unit: 3623

c) analyzing the supporting T&D result and the at least one evaluation of the results of the monitoring and controlling during the distribution of the goods utilizing a transportation result management system, analyzing step c) including the steps of:

ii) managing drivers and vehicles (see paragraph 137; where the management of data is used to level the demand for staff (drivers) and vehicles (equipment).); and

iii) managing resources and energy (see paragraph 137; where the management of data is used to level the demand for staffing, equipment, and power.),

wherein the monitoring and controlling step b) includes the steps of:

a) performing an in-and-out control operation (see paragraphs 40, 159, and 729; where vehicles can be in-house transportation, contracted, or through a vendor.);

b) performing a monitoring and controlling operation (see paragraphs 27, 29-35, 280-282; where delivery conditions, such as the capacity of the delivery routes, are monitored and reported.); and

c) performing a returning control operation (see paragraphs 138-140; where the tracking portion of the system enables management to monitor all events of the distribution network, during and after the distribution.).

wherein, in the performing of step c), the returning control operation occurs during and after vehicles are returned (see paragraphs 138-140; where the tracking portion of the system enables management to monitor all events of the distribution network, during and after the distribution.).

Barts fails to explicitly teach "i) managing cost, expense, benefit, and reward".

However, Barts does teach the management of data in order to manage costs and

Art Unit: 3623

expenses thereby increasing profits (see paragraph 137). Furthermore, it is old and well-known in the art to manage cost, expense, benefit, and reward. These factors are generally managed in the art in order to increase profits by facilitating a product to its point of destination. It would have been obvious, to modify Barts to account for the management of cost, expense, benefit, and reward in order to increase profits by facilitating a product to its point of destination, which is a goal of Barts (see paragraph 25).

Barts also fails to explicitly teach the monitoring, control, and analysis of "a return of a remainder of the goods by the vehicles after the distribution of the goods, and a return route of the vehicles" data. Nakagawa, in an analogous art, teaches the monitoring, control, and analysis of "a return of a remainder of the goods by the vehicles after the distribution of the goods, and a return route of the vehicles" data (see Nakagawa paragraphs 78 and 83-93; where return times and return routes are included in the evaluation of the transportation and distribution plan.). The advantage of this feature is that it enables a user of the system to facilitate the distribution of product by accurately depict the costs associated with the transportation and distribution of product. It would have been obvious, at the time of the invention, to one of ordinary skill in the art to combine the feature of monitoring, control, and analysis of "a return of the goods after the distribution, and a return route of the vehicles" data taught by Nakagawa to Barts in order to facilitate the distribution of product, which is a goal of Barts (see paragraph 25).

As per claim 22, Barts teaches:

The method according to claim 21, wherein, in the processing step a), the establishing T&D data step i) includes the steps of:

a) maintaining T&D basic data and setting T&D cost data (see paragraphs 29-35; where basic data and cost data are maintained.); and

b) determining delivery requirements for ordered goods (see paragraphs 29-35; where delivery requirements, such as delivery times and destinations, are determined).

As per claim 23, Barts teaches "wherein the processing step a) includes the steps of: a) maintaining T&D basic data and setting T&D cost data" (see paragraphs 29-35; where basic data and cost data are maintained.); "b) determining delivery requirements for ordered goods" (see paragraphs 29-35; where delivery requirements, such as delivery times and destinations, are determined); "c) performing a vehicle-arrangement operation" (see paragraphs 128 and 135; where vehicles are transported to a mixing center where they are arranged by destination to be loaded on to car-haulers to their destination.); "d) performing a trip adjustment operation" (see paragraphs 132-135; where routes for the trip are optimized.); and "f) performing a vehicle assignment operation" (see paragraphs 128 and 135; where vehicles are transported to a mixing center where they are arranged by destination to be loaded on to car-haulers to their destination.). Barts fails to teach "e) performing a cut-in vehicle-arrangement operation". As discussed in the 112 second paragraph rejection, this term is interpreted to mean a priority vehicle arrangement operation. Nakagawa, in an analogous art, teaches a priority vehicle arrangement operation (see Nakagawa

Art Unit: 3623

paragraphs 20 and 106-107; where vehicles are arranged and categorized in to priority and non-priority vehicles in order to ensure the delivery of the product.). The advantage of this feature is that the distribution network can ensure the delivery of products by the appropriate deadlines. It would have been obvious, at the time of the invention, to one of ordinary skill in the art to combine the feature of a “cut-in vehicle arrangement operation” taught by Nakagawa to Barts in order to ensure the delivery of products in the appropriate time, which is a goal of Nakagawa (see Nakagawa paragraph 7).

As per claim 25, Barts teaches “in the performing of step d), the trip adjustment operation utilizes trip assemblies selected from a group of trip assemblies consisting of multiple transfer-trip assemblies, the trip adjustment operation includes developing a comparison and confirmation before and after each adjustment” (see paragraphs 476 and 739; where the geographic build planning tool optimizes trip routes and multiple trip routes, trip time adjustments. Scenario development and implementation of all trips are analyzed and validated before implementation.). Barts fails to explicitly teach “return-trip assemblies”. This limitation was already addressed by the rejection of claim 1; therefore the same rejection applies to this claim.

As per claim 26, Barts teaches performing scenario simulations to determine the optimal distribution and transportation plan for vehicle arrangements where each scenario is validated and confirmed prior to implementation (see paragraph 451, 476, 479, 507, 725, and 729-731). Barts fails to explicitly teach the “cut-in” operation. This limitation is already addressed by the rejection of claim 23; therefore the same rejection applies to this claim.

Art Unit: 3623

As per claim 28, Barts teaches:

The method according to claim 27, wherein, in the performing step a), the in-and-out control operation includes vehicles selected from private vehicles, contract vehicles, and a combination thereof (see paragraphs 40, 159, and 729; where vehicles can be in-house transportation, contracted, or through a vendor.).

As per claim 29, Barts teaches:

The method according to claim 27, wherein, in the performing of step b) the monitoring and controlling operation includes monitoring and controlling vehicles in motion and collecting delivery conditions, and reporting findings to a delivery center (see paragraphs 27, 29-35, 280-282; where delivery conditions, such as the capacity of the delivery routes, are monitored and reported.).

As per claim 31, Barts teaches:

The method according to claim 30, wherein the vehicles are returned to a place selected from a group of places consisting of a place of origin and a place of delivery (see paragraphs 29-35; where vehicles are at a place of origin or at a destination point.).

As per claim 32, Barts teaches:

The method according to claim 21, wherein, in the monitoring and controlling step b), the maintaining and evaluating results step ii) includes evaluating receipt of vehicles in distribution and daily vehicle-assignment records and generating contract vehicle results and driver reward valuation results (see 764-796; where the

Art Unit: 3623

management team evaluates several operation performances, including receipt of vehicles in distribution, contractor efficiency, and overhead payroll expenses.).

***Conclusion***

8. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kalyan K. Deshpande whose telephone number is (571) 272-5880. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*KAP*  
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